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BOOKS

BOOK REVIEWS

ILLEGITIMACY: LAW AND SOCIAL POLICY. By Harry D. Krause. Indianapolis: The Bobbs-Merrill Company, Inc. 1971. Pp. xx+379. Hardbound. \$14.00.

This is a book with a point of view. The author sets out to prove, and does so with eloquence and great scholarship, that the illegitimate child is the subject of the same sort of mindless discrimination as the child discriminated against because of color, creed, or sex. In an exhaustively documented survey of the law of illegitimacy, Professor Krause traces the roots of this discrimination to ancient prejudices, vested interests, and self-righteous moral orders.

In his thorough review of the prevailing law of illegitimacy, he locates and follows favorable trends in the case law and indicates the expected shape of future jurisprudence. Although he is hopeful for a favorable impact of case law on equal rights for the illegitimate, especially since the landmark cases of *Levy v. Louisiana*¹ and *Glon v. American Guarantee & Liability Insurance Company*,² he concludes that the far-reaching reforms necessary to achieve the desired result can only be accomplished through legislative reform in each of the states.

The value of the book lies in its comprehensiveness. After defining the problem and pointing out the constitutional basis for the illegitimate's right to equality, Krause makes the reader aware of the reality of these rights by examining their substantive content and recommending methods of implementation. For example, after reviewing the illegitimate child's right of support from his parents, he concludes that those rights should be equal to that of a legitimate child in comparable factual circumstances, i.e., it should be equal to the right of support owed the child of divorced parents. This can only be guaranteed through legislation. Likewise, the illegitimate child should inherit and pass inheritance, as if legitimate, from and to his mother, his father, and his mother's and father's families. The areas of visitation, custody, adoption, paternal name, state and federal "benefit" laws, and United States citizenship are also thoroughly examined.

Obviously, equality for the illegitimate in all of these areas gives

¹ 391 U.S. 68 (1968).

² 391 U.S. 73 (1968).

rise to diverse legal questions most of which, the author remarks, can be adequately handled by appropriate legislation and a competent approach to the various problems of proof. Thus, Krause surveys in detail the burden of proof in paternity actions, the legal methodology employed, and modern techniques which reduce the margin of error in determining the identity of reluctant fathers. Blood typing, anthropological evidence, period of gestation, proof of sterility or impotency, and lie detector tests are all discussed in depth and valuable recommendations are offered concerning the disposition and handling of paternity actions.

In order to place the entire question in proper social context, Krause undertakes to document public attitudes on law and illegitimacy reflected in a comprehensive questionnaire set forth in the book. The results of this questionnaire are surprisingly favorable to the illegitimate's claim to dignity and equality.

Furthermore, the author discusses foreign approaches to illegitimacy contrasting the laws of this country to those of Norway, France, and West Germany. The comparison places our laws in an unfavorable light. The foreign jurisdictions were carefully chosen. Norway was selected because of its break with tradition in 1915 by establishing substantial equality for the illegitimate child in his legal relationship with his mother and father. Norway was the first country to adopt this type of legislation. French law was chosen in deference to its influence on many legal systems throughout the world. West Germany was likewise included because of her recent legal innovations providing full equality for the illegitimate. In addition to a detailed review of these three foreign systems, Krause studies the constitutions of a multitude of other countries which have granted legal equality to the illegitimate.

Finally, in order to provide a workable standard for law reform in the United States, the text of Professor Krause's proposed uniform legitimacy act as reported to the National Conference of Commissioners on Uniform State Law is printed in full. For implementation, such an act would have to be passed by each of our state legislatures, so the tremendous value of the Professor's book thereby becomes self-evident. Widespread information about the nature and dimensions of the problem must naturally be communicated to the public before reform is possible.

Despite the American public's progressive attitudes with respect to equal rights for illegitimates, the author humorously notes that even Abigail Van Buren (of the famous "Dear Abby" column) needed more factual information before even she could overcome her own misconceptions. She had at one time commented in her column

that she was "disgusted with handing over my tax dollars for the welfare of women who have one illegitimate child after another for the sole purpose of picking up the welfare check." Not long thereafter, some of her readers called attention to the fact that a Los Angeles County woman with one child (legitimate or otherwise) receive aid in the amount of \$140.00 a month while the same woman with a second child received only one more dollar per day.

In conclusion, Professor Krause eloquently proves that illegitimacy is not only a matter of personal tragedy to the innocent victim who suffers from bias and prejudice, but is also a social problem of widespread significance only to be solved through the granting of equal rights to the illegitimate. The manifest fairness and relative legal, social, and political ease of accomplishing this is strikingly presented in this book. It is a must for the library of not only every student of the law but every practicing attorney and every public-spirited citizen as well.

*James J. Cox**

MANAGING LOCAL GOVERNMENT UNDER UNION PRESSURE. By David T. Stanley. Washington, D.C.: The Brookings Institution. 1972. Pp. xiii + 177. Hardbound. \$6.95.

THE UNIONS AND THE CITIES. By Harry H. Wellington & Ralph K. Winter, Jr. Washington, D.C.: The Brookings Institution. 1971. Pp. xiii + 226. Hardbound. \$7.95.

It is difficult to find useful writings which give knowledgeable rather than speculative coverage of employee bargaining as it operates in the public sector. Only a few books, such as those written by Kenneth Warner and Felix A. Nigro, have come from persons having a knowledge of the intricacies of government. Consequently, *The Unions and the Cities* and *Managing Local Government Under Union Pressure* appear now as welcome contributions. They are well written books that fill obvious gaps in the rather sparse literature of an extremely important area of law.

The Unions and the Cities

Almost everything Wellington and Winter say makes sense from the reviewer's perception of the evolving scene. Their coverage of

* B.A. 1957, Tulane University; J.D. 1959, Tulane University; partner in the law firm of Cox & Cox, Lake Charles, Louisiana; attorney for petitioner in the case of *Lou Bertha Labine v. Simon Vincent*, 401 U.S. 532 (1971), during which Professor Harry D. Krause filed a brief *amicus curiae* on behalf of the American Civil Liberties Union.

the subject matter is good, although in some areas it lacks detail. The view that there is a difference between public and private sectors should be emphasized and stated again and again. Likewise, the questions of sovereignty and the illegal delegation of power are essential reading for all parties engaged in problems surrounding collective bargaining in the public service. The authors underscore the thought that the impact of unions on the public service, and the country as a whole, has not yet been determined, nor has the manner in which employee groups will deal with government entities.

Redundancy of governmental forms and authority make collective bargaining difficult, if only because it is hard to know "who's on first." Part III, "Bargaining in the Public Sector," is particularly instructive in delineating structured forms and sources of power which impinge on the bargaining process.

Authors Wellington and Winter support the concept of excluding supervisors from bargaining units. Here, the reviewer is compelled to raise a question that is of growing concern to organization theorists: Does the exclusion of the supervisor reinforce hierarchical forms of questionable usefulness? To legitimize a hierarchical framework that is of most doubtful virtue may be giving the legitimacy and political support necessary to maintain an already archaic, inflexible bureaucracy which seems bent upon ignoring, if not accelerating, the self-destructive tendencies of a troubled civilization. The authors apparently approve of the Wisconsin Employee Relations Board criteria for identifying supervisors: "authority . . . to effectively *recommend* (emphasis mine) the hiring, promotion, transfer, discipline, or discharge of an employee"¹—a stand that the reviewer with some twinge of conscience supports. But, they also endorse criteria such as the amount of time spent in supervision, "the number of employees supervised,"² "the level of pay,"³ "the authority to direct and assign work,"⁴ and "the amount of independent judgment the person exercises."⁵ If such criteria are determinative, then the hopeful trend toward participative decision approaches and industrial democracy based on the consent model would appear to be an idle dream.

The authors note, and partially dismiss, arguments that supervisors in the public service are different because job titles are misleading and job descriptions overstate actual responsibilities. They do not note, however, that the classification system is consistently used as a substitute for a fair and equitable salary plan. To separate

¹ H. Wellington & R. Winter, *The Unions and the Cities*, 114 (1971).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

so-called supervisors from other workers in a bargaining unit in many instances would indeed separate those holding a community of interests. Certainly it has provided management with a "maintenance force" in the event of a strike. In a deferred sense, the separation of supervisors from other workers is likely to be even more important. It means that the trend toward flattened organizations (small, responsible and effective work groups, quick and flexible response units) may be virtually impossible to achieve.

True management in the public service is not so difficult to recognize. There is a compelling case to be made that management should be defined in terms of effective authority (such as the "appointing power") and that the hierarchical interpretation of organization be allowed to devolve in a sensible manner. Since economists, lawyers, and political scientists have not been exposed to organizational problems seen as important by theoreticians examining the fields of administrative organization and behavior, they often see it as most reasonable to separate supervisors in bargaining units. Some organization theorists would think otherwise.

In the postscript to *The Unions and the Cities*, Messrs. Wellington and Winter capture the essence of the major social issue addressed by the book. The authors state in ringing words that they reject the notion that "what is good for the public employee is good for the city." They believe, as they say, that states, counties, and cities have needs at least equal to the public employees and that bargaining practices cannot be mindlessly imported from the private sector. "Make no mistake about it," they warn, "government is not just another industry."⁶

Managing Local Government Under Union Pressure

Stanley's book deals in somewhat more detail with conflicts between normative governmental practices and collective bargaining as it exists in the private sector.

In sequence, the author considers the effect of unions in the public sector on employment relationships, hiring, promotion, training, grievances, classification pay, benefits, management, and working conditions, and on the important areas of budget and finance. Stanley notes that in each of these areas there are growing adjustments as well as conflicts in existing systems. While such conventional wisdom as the notion of "equal pay for equal work" exists under both the merit system and collective bargaining, it is clear that the more aggressive unions prefer to have classification decisions made through

⁶ *Id.* at 202.

the collective bargaining process rather than through the usual civil service examination process.

Stanley also directs attention to methods of promotion. Under civil service, promotion in many of the more mature systems supposedly occurs through a system of formal competition. Unions wish to limit competition so that, effectively, only employees who have served time in lower grades can compete for higher positions. Since much of the competition is so regulated at the present time, the Union effort could only solidify an already debilitating process.

The author's chapter entitled "Effects on Budget and Finance" may be the most important portion of his book. Local government, restricted by charter provisions, tax ceilings, state law, reliance on regressive property taxes and faced by a citizenry that already feels overburdened by the extractive revenue processes, is finding it difficult to meet demands made between budgetary sessions and the annual determination of the budget and the tax rate. In some cases, meeting the demands for higher wages can only be achieved by the layoff of a sufficient number of employees. Cities have also utilized such devices as surtaxes on utility bills and occupational taxes on various types of business to finance recurring deficits. Financing becomes even more complicated in jurisdictions requiring compulsory arbitration. Professional arbitrators, deciding cases within the usual labor relations framework, increasingly appear to be making findings that bind, and often financially embarrass, the local government involved.

One can only hope that the optimism over the outcome of collective bargaining which Stanley expresses in the final paragraph of *Managing Local Government Under Union Pressure* is justified. There is a remote and somewhat utopian hope that the slow response of government to existing urban problems may be corrected by strong employee organizations. However, such employee organizations presently seem neither aware nor concerned with the social consequences of their actions. A more dismal view might be that the great public bureaucracies are now being joined by growing union bureaucracies which will make monolithic and inflexible government structures even more immovable.

Philosophically, the question of special interest pluralism is a societal dilemma in the United States that may be confounded rather than assisted by a strong union movement in the public service. We would hope that in the future some investigator would seriously address the relationship between government structures, civil service, and collective bargaining as it affects our capacity to perform the public business necessary for survival. We would also hope that students

would address the related question of how unions in general, and in the public service in particular, inhibit or accelerate moves toward industrial democracy. Could it be that traditional collective bargaining borrowed from the private sector and applied to the public service is an idea whose time has passed?

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LEGAL SECRETARY'S HANDBOOK (CALIFORNIA). Ed. by Patricia S. Brady. Los Angeles: Parker & Sons Publications, Inc. 1971. Pp. xxii + 732. Hardbound. \$27.00.

The *Legal Secretary's Handbook (California)* has been rewritten and brought up to date to include recent changes in forms and procedure. The Handbook is not only larger, containing over 700 pages, but it includes a "Dictionary for Secretaries" and a pocket for future supplements. The book also provides blank pages at the end of each chapter for noting current changes in local court rules as well as in the California Rules of Court.

Edited by Patricia S. Brady, PLS, with the assistance and guidance of the bench, bar, and members of Legal Secretaries, Inc., the Handbook represents an excellent contribution to the legal profession. The *Legal Secretary's Handbook (California)* is the "bible" for legal secretaries, offering the procedures and forms used by legal secretaries under the supervision and direction of attorneys in the California law office.

The first chapter focuses on the Courts of Justice. Chapters 2, 3, 4, and 5 deal with the commencement of civil actions, pleadings, service of process, provisional remedies, and trial and judgment in civil actions. Chapters 6 and 7 follow up with after judgment proceedings and appeals. Particularly helpful is Chapter 12 wherein are listed specific allegations used in general complaints, together with wording for common counts, retail installment sales, venue, notice, and negligence.

Divorce law is an area that has undergone probably the most complete revamping in recent California history. In the Handbook, a full chapter sets forth this transformation under the new Family Law Act. Many of the more routine functions in the handling of a divorce case can now be managed by the attorney's secretary.

Two new chapters have been added to this edition discussing

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adoptions and probate. Chapter 14, "Probate Court Proceedings," suggests and enumerates the many details regarding estates, termination proceedings, guardianships, and conservatorships.

Aside from the many specific categorizations of forms in other chapters, one full section is comprised of a catchall of forms. It covers a wide variety of subjects such as acknowledgments, fictitious name statements, substitution of attorneys, forms for motions, verifications, and fee schedules, not only for the Superior, Municipal, and Justice Courts, but for Constables, Marshalls, Sheriffs, and County Recorders.

Over the twenty-two chapters, the book covers procedures for other topics, including foreclosures of mortgages and trust deeds, unlawful detainer, criminal law, workmen's compensation cases, corporations, the California Commercial Code, and federal courts, to name a few. Moreover, the last chapter is a compilation of useful reminders, hints, and aids.

A new feature of the Handbook is the "Dictionary for Secretaries," compiled by Virginia G. Haines, PLS, and Catharine Ryan, PLS. The dictionary consists of brief definitions of frequently used legal vernacular, as well as proper word division and spelling.

The *Legal Secretary's Handbook (California)* provides a practical and concise source of necessary material and has useful value in helping to organize the expenditure of the secretary's time. It is a convenient guide for the legal secretary, and indirectly the attorney, too, in carrying out the mechanics of the practice of law.

Jackie Ritchey*

THE DEVELOPING LABOR LAW: THE BOARD, THE COURTS, AND THE NATIONAL LABOR RELATIONS ACT. Ed. by Charles J. Morris. Washington, D.C.: The Bureau of National Affairs, Inc. 1971. Pp. L + 1054. Hardbound. \$24.85.

To evaluate a book in the nature of *The Developing Labor Law*, it is necessary initially to determine the purpose of the book, analyze its manner of presentation, and discuss its success or failure as measured by its purpose and presentation.

First of all, the book is a treatise, a reference source, or more colloquially, a hornbook, designed to give the reader a detailed insight into what is broadly termed "labor law." This particular guide

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book deals with one specific aspect of labor law, that is, the National Labor Relations Act and the decisions of both the courts and the National Labor Relations Board as engendered by the Act. To say that the book deals only with the National Labor Relations Act is probably not a fair indication of the magnitude of the task undertaken by the seventy-two individuals who contributed to its production. The over 190 volumes of Board decisions since 1935 and the thousands of appellate cases, provided a formidable project which took five years to complete. The goal of the authors was to chronicle for the first time the development of the law under the NLRB interwoven with its historical background and to present the current state of decisional labor law. The envisioned result was a comprehensive and analytical treatise for those interested in the intricacies of labor law.

The book is divided into seven parts. The first part is chiefly historical, describing the growth of labor law prior to the enactment of the Wagner Act in 1935 and the inadequacies of judicial regulation, and then tracing its development and change through the Wagner Act, the Taft-Hartley Act (1947), and the Landrum-Griffin Act (1959). The last section of the book is concerned with the administration of the Act and sets forth material with respect to the Board's jurisdiction, its procedures, orders, remedies, and judicial review of Board decisions. The other sections catalogue the heart of labor law: employee rights; the representation process and union recognition; the collective bargaining process; economic activity; and relations between employee and union.

The text presents the law succinctly, fairly, and concisely with footnotes adding a plethora of cases and law review articles for those who wish to probe the rationales for decisions and the divergent comments on the developing case law. The book sets forth not only the present decisional law but, where relevant, shows the various historical stages in the development of the law. Thus, for example, the reader can learn the current law with respect to how a union may establish bargaining rights with an employer without submitting to the election procedure as elucidated by the recent Supreme Court decision in *NLRB v. Gissel Packing Co.*,¹ and, at the same time, be afforded the opportunity to examine all the earlier doctrines bearing on the same question. Similarly, the reader can explore some of the mysteries of Section 8(b)(4)² and trace its evolution to its present decisional state through the changes wrought by Board and court interpretations as well as Congressional legislation. Such historical

¹ 395 U.S. 575 (1969).

² 29 U.S.C. § 158(b)(4) (1970).

perspective adds a meaningful dimension to understanding the purpose and thrust of labor law and its effect upon our society.

Without a doubt, this book makes a significant contribution to the labor law practitioner or, for that matter, to anyone else interested in understanding the problems of labor management relations. The book is well organized and written in a comprehensible and objective style. Given the fact that this book marks the joint writing efforts of law professors, and partisan labor and management attorneys, it is noteworthy that the book achieves an unbiased, "no axes to grind" approach to labor law. Much credit must be given to the chief editor, Charles J. Morris,³ whose talents as a scholar, editor, and writer were responsible for the final product. One criticism of any book in the labor law field has always been that it becomes outdated almost immediately after publication because of the dynamic and changing aspects of labor law. This book, however, promises to meet that challenge with the continual addition of annual supplements. Future reports of the Labor Relations Section of the American Bar Association, at whose initiative this book was produced, will be keyed to the organization of *The Developing Labor Law* and these reports will be published as the annual supplements. Such a system can prolong the value of this worthwhile book for years to come.

In the foreword, the Dean of the Columbia Law School, Michael Sovern, notes that the practitioner will find in this book a "useful, practical guide to the law he needs to know," and that the student will find a "helpful crutch."⁴ This comment is, of course, true. It must be added, however, with respect to students, that the book is an extremely costly crutch at the absurd price of almost twenty-five dollars. In view of the fact that numerous authors have generously donated their services to make this book possible, it might have been hoped that the book would be offered at a more reasonable price. Surely, there also will be many practitioners who will find the price somewhat inflationary. Considering the excellent quality of this book and the desirability of having as many persons as possible profit from its scholarly content, the question should definitely be asked of its publisher, the Bureau of National Affairs—why so expensive?

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⁴ SOVERN, *Foreword* to THE DEVELOPING LABOR LAW at ix (C. MORRIS ed. 1971).

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ATLAS' TAX ASPECTS OF REAL ESTATE TRANSACTIONS, Rev. 5th Ed. By Orton W. Boyd. Washington, D.C.: The Bureau of National Affairs, Inc. 1971. Pp. xiv + 394. Hardbound. \$15.00.

Orton W. Boyd¹ has revised Martin Atlas' *Tax Aspects of Real Estate Transactions* updating the material and incorporating the effects of the Tax Reform Act of 1969. The impact of taxation in the field of real estate is perhaps more significant than in any other field.² Thus, it is extremely important that practitioners involved in real estate transactions have a knowledge of the applicable tax factors. Boyd's revised edition provides an accurate and complete outline of these tax factors.

Chapter II, entitled "How to Organize," is the only chapter that will be of limited use to the California practitioner. As is the case with most real estate texts and seminars with national application, too much emphasis is placed upon the corporate form as a vehicle to acquire and own real estate. Conversely, too little emphasis is placed upon the alternatives of limited and general partnerships.³ California statutes dealing with mortgages and deeds of trust⁴ greatly limit the liability involved in the ownership of real estate.⁵ Therefore, the limitation of liability as one of the reasons for using the corporate form is practically inapplicable in this state. Notwithstanding Boyd's conclusion that personal liability may not be the controlling factor in deciding whether ownership should be corporate or individual,⁶ the author sets forth three additional "advantages of corporate ownership,"⁷ two of which are questionable.

One of these advantages is particularly misleading: "for individuals with larger incomes, corporate tax rates may be lower than individual tax rates."⁸ In that statement, Boyd fails to explain the

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² In real estate transactions, there is greater latitude and control in planning the structure of a transaction; however, this latitude is correlated to a greater number of advantageous and disadvantageous tax effects resulting therefrom.

³ Limited and general partnerships are widely used in California, and experience has shown them worthy of such use.

⁴ CAL. CIV. PRO. CODE § 580(b) (West 1955) (no personal liability exists in connection with the foreclosure of a "purchase money mortgage"); CAL. CIV. PRO. CODE § 580(d) (West 1955) (no personal liability exists in connection with the foreclosure under the power of sale provisions of a deed of trust or mortgage); CAL. CIV. PRO. CODE § 726 (West 1955) (sets forth the procedure for judicial foreclosure of mortgage, a lengthy procedure which is seldom used). See generally, H. MILLER & M. STARR, CURRENT LAW OF CALIFORNIA REAL ESTATE 463-556 (1965).

⁵ Most of the remaining personal liability involves insurable risks.

⁶ O. BOYD, ATLAS' TAX ASPECTS OF REAL ESTATE TRANSACTIONS 6-7 (5th rev. ed. 1971) [Hereinafter referred to as BOYD].

⁷ *Id.* at 7-8.

⁸ *Id.* at 7.

double tax aspect of a corporation on the current distribution of funds or upon liquidation⁹ and the possible application of the personal holding company tax¹⁰ and the collapsible corporation provisions.¹¹ The personal holding company provisions require a passive investment corporation to pay as dividends its income in order to avoid an excessive tax.¹² The collapsible corporation provisions convert what would have been capital gain, if owned individually or by a partnership,¹³ into gain taxed at ordinary income rates upon the sale of stock or liquidation of a corporation owning property that it had previously constructed.¹⁴ While Boyd discusses these and other corporate tax disadvantages later in the book,¹⁵ he does not directly relate them to his discussion of determining how to organize in Chapter II; nor again, does he adequately consider the partnership entity as an alternative form of organization.

The second of Boyd's questionable corporate advantages, "where there are several owners, individual shares may be more easily disposed of,"¹⁶ can be accomplished to a considerable extent by a general or limited partnership.¹⁷ In light of the aforementioned corporate tax disadvantages, this aspect of a corporation should *not* be an important factor in selecting the form for acquiring real property.

The author's final suggested advantage to adopting incorporation is the element of depreciation. Boyd refers to it as "the single most important income tax deduction for real estate owners."¹⁸ However, depreciation operates in a corporate form only as an offset against the earnings of a corporation, a separate taxpaying entity, and none of the depreciation in excess of such earnings passes through to benefit the shareholders.¹⁹ In individual owner-

⁹ *Id.* at 288-300.

¹⁰ INT. REV. CODE OF 1954, §§ 541-47. See BOYD at 317-24.

¹¹ INT. REV. CODE OF 1954, § 341. See BOYD at 303-17.

¹² INT. REV. CODE OF 1954, §§ 541-47. See BOYD at 317-24.

¹³ INT. REV. CODE OF 1954, § 751, referred to as the "collapsible partnership section," can be more easily controlled by tax planning. See A. WILLIS, WILLIS ON PARTNERSHIP TAXATION §§ 20.07-08 (1971).

¹⁴ INT. REV. CODE OF 1954, § 341. See BOYD at 288-338.

¹⁵ BOYD at 288-338.

¹⁶ BOYD at 7.

¹⁷ As long as not more than 50% of the interests in a partnership are transferred within a 12 month period thereby terminating the partnership for tax purposes and affecting all partners. See INT. REV. CODE OF 1954, § 708(b)(1)(B).

¹⁸ BOYD at 60.

¹⁹ Except for a corporation electing sub-chapter S treatment under INT. REV. CODE OF 1954, §§ 1371-79 which in general eliminates the separate taxpaying entity characteristics of a corporation and passes through the income and deductions of a corporation to the individual shareholders; since such an election terminates if the corporation has gross receipts of more than 20% of which is passive investment income, including rents, an investment-type real estate corporation can seldom elect sub-chapter S. See INT. REV. CODE OF 1954, § 1372(e)(5).

ship or ownership by a partnership, depreciation deductions are frequently large enough to offset or shelter not only the cashflow generated from the property but an individual's or partner's income generated from other sources.²⁰

These considerations lead to the general premise that, at least in California, investment type real property should be held individually or by a general or limited partnership and not by a corporation.²¹ The California practitioner, therefore, should consider Chapter II as realistically inapplicable to California real estate transactions. He should also consider Chapter XI, "Corporate Organization, Reorganization, Liquidation, and Stock Redemption," and Chapter XII, "Special Problems of Closely Held Corporations," applicable to nonreal estate investment corporations as well as to situations resulting from the prior use of corporations as a real estate vehicle.

Aside from Chapter II, the remainder of the book gives an accurate and workable summary including charts of the principal tax factors affecting the operation and disposition of real estate. Boyd's discussions include real estate income and deductions, depreciation and amortization, sales, mortgages, deferred payment sales, exchanges, federal estate and gift taxes, and an excellent chapter on leases.

A disappointing aspect of the book is the variation in the authorities cited as the basis for the principles set forth. The citations, accumulated in footnotes at the end of each chapter, vary from detailed (citing several cases for a particular point) to the general (such as citing an Internal Revenue Code section for a specific point within the section or its Regulations) to total inadequacy. Boyd cites the *Tax Guide for Small Business*²² approximately 27 times and *Your Federal Income Tax*²³ approximately seven times. Extensive citation of these books, available from the U.S. Government Printing Office as an aid to filling out tax returns, is unfortunate. For example, in his discussion of prepaid interest, the author cites the *Tax Guide for Small Business*²⁴ as authority for the rule that a cash basis taxpayer may deduct currently prepaid interest for the period up to 12 months beyond the tax year in which it is

²⁰ See INT. REV. CODE OF 1954, § 703(a)(2)(E); Treas. Reg. § 1.702-2 (1956).

²¹ This premise does not necessarily apply to trade or business property owned in connection with a nonreal estate trade or business or to raw land to be acquired for development and subdivision. See generally 3 H. MILLER & M. STARR, CURRENT LAW OF CALIFORNIA REAL ESTATE 605-662 (1971).

²² U.S. TREASURY DEPARTMENT, TAX GUIDE FOR SMALL BUSINESS (1970).

²³ U.S. TREASURY DEPARTMENT, YOUR FEDERAL INCOME TAX (1970).

²⁴ BOYD at 50-51, citing U.S. TREASURY DEPARTMENT, TAX GUIDE FOR SMALL BUSINESS 11, 29 (1970).

paid, if no distortion of income results, while the taxpayer must deduct interest prepaid beyond such period over the period to which it applies.²⁵ The basis for this rule is one of the most significant Revenue Rulings affecting real estate released in the last few years.²⁶ If the practitioner were called upon to render an opinion regarding the deductibility of prepaid interest, he could not obtain the primary authority from Boyd's text and would therefore miss the important explanation of the rule. The Revenue Ruling²⁷ omitted from Boyd's citation sets forth a list of the factors that must be considered in determining whether a material distortion exists to prevent deductibility in the current year of a prepayment of interest less than 12 months beyond the current tax year.²⁸

Notwithstanding these limitations, Boyd's revision would be an asset to any law library. It gives the practitioner, especially a general practitioner not extensively involved in detailed real estate tax research, a good over-all view of the tax aspects of real estate transactions.

*James E. Burden**

URBAN PLANNING AND LAND DEVELOPMENT CONTROL LAW. By Donald G. Hagman. St. Paul: West Publishing Company. 1971. Pp. xxvii + 599. Hardbound. \$12.50.

Professor Hagman states in his Preface that this book is designed to be used as a supplementary text for either a basic property course that includes a planning and development segment or to furnish breadth to a problem-oriented land-use planning course. While the book is certainly desirable for the first use, its more frequent and certainly ideal use will be as a "hornbook" in land-use planning courses.

If the book is viewed as primarily a supplementary text for a land-use planning course, it is readily apparent that there are three significant areas of breadth in the book which deserve special mention. The first of these is the initial emphasis on planning as a

²⁵ *Id.*

²⁶ Rev. Rul. 68-643, 1968-2 CUM. BULL. 76. See Asimow, *Principle and Prepaid Interest*, 16 U.C.L.A. L. REV. 36 (1968).

²⁷ Rev. Rul. 68-643, 1968-2 CUM. BULL. 76.

²⁸ These factors include the amount of income in the taxable year of payment, the income of previous taxable years, the amount of prepaid interest, the time of payment, the reason for prepayment, and the existence of a varying rate of interest over the term of the loan. Rev. Rul. 68-743, 1968-2 CUM. BULL. 76.

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concept. There is very little done in most current land-use planning works to describe the planning process and to illustrate planning as more than decision making. Professor Hagman points out that planning, at least as an ideal, is an integrated process; hard thought as to goals, hard research to create data, and decisions for implementation are all required. But the decisions should not be static. Rather, they should be decisions which are understood to be modifiable as goals; or, the decisions should serve as information exchanges.

Just as the initial presentation of planning as a concept prevents the reader from seeing planning as the process of placing rigid rules on land use and development, so the overview of planning as a national concern prevents localized thinking. Most standard works do tend to focus only on the specific problems solved or created by local ordinances or other localized controls. Such a focus tends to give the whole land-use planning area a myopic outlook; this problem has been avoided by the Hagman approach—the second area of breadth deserving special mention. As the reader progresses through the book into the more finite considerations of local and private planning, his memory of the earlier presentation constantly reminds him of the larger issues involved in effective consideration of the specifics.

The third way in which this book is unique is the breadth of discussion concerning specific planning tools. Every other major treatise in the land-use planning area is limited in scope to a single aspect of planning, e.g., zoning, municipal control over subdivisions, covenants. This book includes a discussion of every available method of controlling land-use. Only in this work can one find judicial zoning through nuisance concepts, the impact of the federal programs, private law devices, condemnation, and taxation included with the larger topics such as zoning and subdivision controls. This total inclusion not only serves to make the work an ideal single source, but again prevents narrow consideration of a single tool by ready cross-references to other tools and ideas. The broad scope further serves to mesh the "hornbook" nicely with the standard casebooks.

Probably because there is such breadth of subject matter, some topics suffer from shallow presentation. The most obvious example is the discussion of restrictive covenants and/or equitable servitudes. This is a complex topic, but one which virtually every lawyer who deals with land-use planning will encounter regularly. It seems that this topic deserves more than the cursory glance it gets in the six pages devoted thereto. The limited discussion fails to provide either supplementation to a property course or breadth to a land-use plan-

ning course. In either course the basic classroom materials will surely provide more than is available in this book. Thus, the extreme brevity and shallowness of this discussion vitiates its usefulness.

Every area, however, while necessarily lacking in great depth, is made useful by copious footnoting and bibliographical materials. The service provided by the author's citations of authority must not be underestimated. Herein may lie the greatest value to any user of the book who is truly interested in pursuing a detailed study of land-use planning. It is probably naive to hope that many student-users of Professor Hagman's book will avail themselves of the opportunity he presents for in-depth study in conjunction with a course; but for the teacher, practitioner, or student doing research there is no better collection of citations to relevant, recent, detailed source materials covering these subjects.

All things considered, this book is an excellent effort to fill a gap that needed to be filled—a broad scope treatise cutting across the whole complex of ideas which affect the way we decide to use one of our ultimate natural resources, land. The book is recommended for the student, the teacher, and the practitioner alike.

Roger D. Groot*

WHEN PARENTS FAIL: THE LAW'S RESPONSE TO FAMILY BREAK-DOWN. By Sanford N. Katz. Boston: The Beacon Press. 1971. Pp. xv + 251. Hardbound. \$12.50.

Professor Katz, in *When Parents Fail*, has expanded and inter-related several prior articles¹ dealing with children and the law, providing us with a sociological policy basis upon which to judge the law and its performance. His is the voice of realism with its expression of genuine concern for the best interests of children. The focal point of the book is the "best interests" rule which courts purport to follow as opposed to what is actually done in practice.

The trouble is, of course, that although slogans and generalizations do not—or should not—decide concrete cases, the "best

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¹ See Katz, *Foster Parents Versus Agencies*, 65 MICH. L. REV. 145 (1966); Katz, *Community Decision-Makers and the Promotion of Values in the Adoption of Children*, 4 J. FAMILY L. 7 (1964); and Katz, *Judicial and Statutory Trends in the Law of Adoption*, 51 GEO. L.J. 64 (1962).

interests" rule is so vague that private predelections, or even superstitions, may be read into it. In his concluding chapter, Professor Katz brings us down to a lower level of abstraction. His criteria are:

1. What disposition will provide the child with an environment that will foster physical and emotional health?
2. What disposition will furnish the child with the economic base necessary for it to become a contributing member of society?
3. What disposition will furnish the child with an environment that will encourage the development of skills and the fulfillment of its intellectual potential?
4. What disposition will provide the child with an environment conducive toward its developing equal respect for all human beings and its maturation into a responsible adult?²

The difficulty with the above criteria in determining the best interests of the child is that they are legally applicable only when there is a free choice as to disposition. They do not apply to dispositions where the contest is between a natural parent and a so-called "stranger," including the state. For example, maternal rights will not be terminated merely because a better physical and emotional environment might be provided elsewhere, or in order to give a child a "better economic base," or a better chance to fulfill "intellectual potential," or to promote egalitarian ideals. If Professor Katz's criteria were applied in the context of parent vs. stranger, it would mean that our children could be taken from most of us and given to those who were wealthier and wiser. Legally, however, before that may be done, the parent must have expressly or impliedly abandoned or relinquished parental rights.³

Thus, although the suggested criteria have but little value in the solution of complex fact issues or as an aid to policy decisions, they do serve a useful purpose. Their merit lies in the inculcation of an attitude, in the development of an approach to placement problems that centers attention upon the needs of the child. Such emphasis is well placed, for traditionally, dispositional problems all too often have been power struggles in which the actual welfare of the child has been subordinated to other considerations.⁴ Nevertheless, in the final analysis, there is no substitute for thorough and careful

² S. KATZ, *WHEN PARENTS FAIL* 146 (1971).

³ Typically, state statutes enumerate grounds for neglect such as will serve for the termination of parental rights, grounds for a finding of delinquency or "persons in need of supervision," situations where consent to adoption is dispensed with, and general criteria for custody cases. Although placement (or disposition) may be the ultimate issue in such proceedings, standards of proof and expressions of public policy may differ. In the background, however, usually there is a judgment as to parental fitness, abandonment, or relinquishment. There must be conduct or an event (such as a surrender for adoption) which occurs before a court reaches the problem of placement.

⁴ For example, under former law in some states the guilty parent in a divorce action was barred from custody regardless of the best interests of the child.

fact finding, just as there is no pat formula which will resolve the problem.

The main virtue of *When Parents Fail* is its realistic appraisal of legal rules and agency practices in order to determine what the rules and practices may mean to the child. Professor Katz succeeds in developing a basis for judging performance against goals. To illustrate his points, he uses numerous actual and hypothetical cases together with an appendix which excerpts portions of several controversial cases. Furthermore, the book will be of interest to the general reader, as well as to specialists, who are concerned about children and the law.

Perhaps the most provocative chapter is that on "state intervention," keyed to an analysis of the import of laws dealing with neglected children. In addition to physical, emotional, and moral neglect, which serve as grounds for the termination of parental rights in many if not most states, we learn that in some states it is child neglect if the child "begs, receives alms, or sings in the street for money."⁵ There is no information as to whether or not such statutes have been applied to Halloween "trick or treating." Definitions of a neglected child in other states encompass a child "found or employed in a bar,"⁶ "working contrary to child labor laws,"⁷ "living in an unlicensed foster home,"⁸ or with a mother who is "unmarried and without adequate provision for the care and support of her child."⁹ In New Jersey, it is disconcerting to note, a child is neglected "when a parent habitually uses profane language in front of a child."¹⁰

The above examples, as Professor Katz notes, reflect supposedly-held middle-class mores. The law of neglect with its accompaniment of state intervention falls most heavily on the poor. State intervention is not as likely to occur on behalf of the emotionally deprived suburban child.¹¹ Although emotional neglect is a phenomenon that knows no class distinctions, only in Idaho and Minnesota have laws been enacted making specific reference to the emotional neglect of a child.

From the standpoint of law reform, Professor Katz's greatest success was his article on the New York decision in the *Jewish Child*

⁵ S. KATZ, *WHEN PARENTS FAIL* 57 (1971).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 58.

¹⁰ *Id.*

¹¹ *Id.* at 60-61.

Care Association case.¹² His trenchant critique of that decision eventually led to a change in New York statutory law so that today's foster parents are accorded preference and may receive a subsidy when they seek to adopt foster children. Chapter four in *When Parents Fail* deals with foster care and expands the former article.

The functioning of courts in dispositional and placement situations is the subject of increasing concern. Professor Katz ranks in the advance guard of the fight for children's liberation; liberation, that is, from vestiges of feudalism, vague notions of *parens patriae*, and an unrealistic paternalism. *When Parents Fail* is a valuable contribution to the growing struggle to emancipate children from archaic law.

Doris Jonas Freed*

PRINCIPLES OF COMMUNITY PROPERTY, 2ND ED. By William Q. de Funiak & Michael J. Vaughn. Tucson: University of Arizona Press. 1971. Pp. xix + 556. Hardbound. \$28.50.

William de Funiak wrote his masterful *Principles of Community Property* 29 years ago.¹ The supplements, the latest of which were published in 1948, were inadequate to keep up with the vigorous change in the legislation and interpretation of community property law. I had not made use of his first edition in my own course, California Community Property, because the book was outdated, also, because of a bias to which I shall later refer.

The second edition is basically an updating of the first volume. Chapter and section headings are the same, with some additions, except for Chapter XI on "Taxation," which has been abbreviated considerably.

It is with some fear and trembling that I undertake to review a classical work of legal erudition. I write as a novice teacher. I also write as one who has been affected by a bias. To teach California Community Property is to emphasize a particularistic, statute-oriented body of law.² To be immersed in California community

¹² *In re Jewish Child Care Ass'n*, 5 N.Y.2d 222, 183 N.Y.S.2d 65, 156 N.E.2d 700 (1959).

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¹ W. DE FUNIAK, *PRINCIPLES OF COMMUNITY PROPERTY* (1943).

² H. E. VERRALL & A. M. SAMMIS, *CALIFORNIA COMMUNITY PROPERTY* 2 (2d ed. 1971).

The character and extent of the statutes defining the system and a course of

property law is to be affected by the lack of a comprehensive system.³

Reading Professor de Funiak and Mr. Vaughn's work has made me conscious of the need to think through to the roots of a body of law in order to realize the stresses and strains within it. The authors do recognize the particularistic nature of community property law in the various states, the heavy emphasis on statutes, and the adverse affect of common law on civil law principles.⁴

But the authors do, nevertheless, think in terms of the system not as a rigid set of rules, but as law guided by purposes. The purposes which they have in mind are two: first, the need to support the family by social structures which aid the development of both man and woman; and second, the desire to present the community property system unencumbered by contradictory growth.

The foreword by Professor Margaret H. Amsler, of Baylor, well summarizes the basic principle behind the author's first purpose, support of the family unit:

Principles of Community Property deals not only with legal principles but also with philosophical principles. The philosophy may be said to consider that the functions of husbands and wives are complementary, rather than competitive. A marriage is regarded as a total which is larger than the sum of its parts.⁵

The authors, whether from prudence or necessity, wisely avoid the notion of the husband as the head of the family unit.⁶ They do, however, condemn the attitude that women should not be partners in the marital enterprise. This strange attitude attributable to the early opponents of the community property system is exemplified by those who characterized it as "the doctrine of those mental her-

decisional law peculiar to California, have resulted in a community property system substantially different from that of the Mexican-Spanish parent system. . . . It has become *sui generis*. . . . Today reference to Spanish or Mexican legal material by lawyers or by courts is very infrequent. For over one hundred years the California Community Property System has been developed under typical American constitutions and with the use of common law procedures. . . . As a result the modern system in content and administration is so different from the parent system and its administration that reference to Spanish or Mexican authority seem of little value.

³ *Id.* at 7. Knutson, *California Community Property Laws: A Plea for Legislative Study and Reform*, 39 S. CAL. L. REV. 240, 240-44 (1966).

⁴ W. DE FUNIAK & M. VAUGHN, *PRINCIPLES OF COMMUNITY PROPERTY* 6-13, 382 (2d ed. 1971).

⁵ *Id.* at vi-vii. *Cf.* at 25-27. Complimentariness is based on recognition of each as a person. *Cf.* at 5: "[recognition] of the wife as a person in her own right is one of the outstanding principles of the civil law and is one of those in which it diverges sharply from the common law."

⁶ *Id.* at 328. "It is not particularly pertinent to this work to attempt a monograph on male dominance as resulting from religious, economic, biological or other considerations."

maphrodites, Abby Folsom, Fanny Wright and the rest of that tribe."⁷

On occasion, the authors may be oversensitive to what they think are criticisms of the community property system, even though those who supposedly criticize it have in mind the same purpose as the authors. For example, in discussing ownership and management problems, the authors state:

These latter matters are apparently not always understood by opponents of the community property system, who seem to think that it attempts to substitute some sort of cold-blooded partnership for what they view as a sacrament. But actually there is attached to the marriage a marital partnership based on the view that two individuals are equally devoting their lives and energies to furthering the material as well as the spiritual success of the marriage.⁸

I happen to believe in the institution of marriage as a sacrament and as a way of living out promises of love. Moreover, I simply agree with the authors that such an institution needs societal protection—community property law is one of those protections which help to develop the mutuality and sharing that is a necessity to the marital relationship.

The second, and major purpose of this book is to present the community property system as a legal system unencumbered by contradictory growth.

The plan and purpose of this work is to present the principles of the law of community property as it actually existed in its fully developed form in Spain, the form, in other words, in which it came to this country and which is actually the law in this country in the community property states. And to present it freed and disencumbered of the many misconceptions and erroneous interpretations which have like barnacles attached to it.⁹

The authors succeed admirably in this purpose. The erudition that is evident in Chapter II, "Origin and Extent of Community Property System," Ch. III, "Spanish Laws and Their Historical Background," and Ch. IV, "Establishment of Community Property System in the United States" extends throughout the discussion of specific rules of community property law.

Conditioned as I am by my own past and more particularly by the California community property system, I believe that the authors have given me new insight into some of the broader areas of com-

⁷ *Id.* at 25, quoting Kirkwood, *Historical Background of the Law of Community Property in the Pacific Coast States*, 11 WASH. L. REV. 1 (1936).

⁸ 2 W. DE FUNIAK & M. VAUGHN, *PRINCIPLES OF COMMUNITY PROPERTY* 237 (2d ed. 1971)

⁹ *Id.* at 13.

munity property law. An example would be the standard presumption that property acquired during marriage is community property is "a rule of substantive law, and is not just procedural, as a rule of evidence."¹⁰ I think that I had tended to look upon the rule only as a rule of evidence.

Nor had I thought much about the giving of a gift to both spouses, assuming that an intention to show that it be held as community property would be acceptable. *Andrews v. Andrews*,¹¹ a California case, indicates too simply that a gift of a home to the spouses before marriage, taken in the husband's name, is held as a tenancy in common. No reasons are given. Once again, the California courts have failed to wrestle with the overarching nature of community property.

Much more importantly, the authors have forced me to look at historical community property principles. They emphasize that "by 'property acquired during marriage' is primarily meant property acquired by onerous title"¹² Onerous title is created by the payment of a valuable consideration. The authors argue that personal injury damages are not acquired by onerous title and thus should not be community property.¹³ They complain that California (which was temporarily in the modern field by declaring that personal injury damages were separate property) has reverted to the older concept that personal injury damages are not acquired by gift, devise, or inheritance and hence must be community property.¹⁴

I suppose that it is on issues like this that I am most torn when reading *Principles of Community Property*. On the one hand, the general principles that have evolved from Spanish law do not solve all the special problems which each state may emphasize in developing its own rules. California, for example, went through several statutory contortions trying to avoid the consequences of contributory negligence in recovery for personal injury damages when husband and wife were involved.

On the other hand, I suspect that even the authors have similar difficulties in reconciling all of their principles with each individual application. For example, acquisitions, earnings, and gains during marriage which are obtained through labor and industry, that is, by onerous title, are community property.¹⁵ If that is the case, then

¹⁰ *Id.* at 118-19.

¹¹ 82 Cal. App. 2d 521, 527-28, 186 P.2d 744, 747 (1947).

¹² 2 W. DE FUNIAK & M. VAUGHN, *PRINCIPLES OF COMMUNITY PROPERTY* 128-29 (2d ed. 1971)

¹³ *Id.* at 128-29, 198-205.

¹⁴ *Id.* at 200-01, 207-09, & § 83.1.

¹⁵ *Id.* at 142-43.

I fail to see how gains from one's separate property can be classified as community property simply because they arose during marriage.¹⁶ Yet the authors roundly condemn California for declaring that rents, issues, and profits from separate property are separate property.¹⁷

Be that as it may, the authors have convinced me of the principle that rents, issues, and profits arising from separate property should be community property. They slyly indicate that California has been at least perceptive enough to apportion such rents, issues, and profits where community effort has contributed to its production.¹⁸ And, they build a strong argument that rents, issues, and profits from separate property should be entirely community property because of the strengthening of the marital union.¹⁹ Such a rule would avoid many of the complex problems of apportionment that exist today where the time, labor, and skill of a spouse have been applied to that spouse's separate property.

I will forego the pleasure of nit-picking which seems to be a usual pleasure of book reviewers. There are small errors of misprint or of interpretation but these are understandable in a work of such sweep, rewritten at a time when the body of law which it treats is in ferment in many jurisdictions.²⁰

The basic value of *Principles of Community Property* is that it resets the topic of community property into the broad scope of history and policy. If there are any weaknesses, they lie in minor discrepancies with regard to the statement of the law of a particular state. I would not advise students to use the book for reference on particular points of California community property law because of the broad scope. But I would recommend it highly for those who wish to see how erudition, policy, and history may be woven together to cause one to reassess one's own point of view.

Paul J. Goda, S.J.*

¹⁶ *Id.* at 160-61.

¹⁷ *Id.* at 57 n.8.

¹⁸ *Id.* at 129.

¹⁹ *Id.* at 161.

²⁰ Just for a little pleasure, CAL. CIV. CODE § 137 (West 1954) which is referred to in W. DE FUNIAK & M. VAUGHN, *PRINCIPLES OF COMMUNITY PROPERTY* 324 n.92, 366 n.21 has been repealed. The recent amendment of CAL. CIV. CODE § 5131 (West 1970) again makes the husband's earnings community property during the wife's abandonment, not separate property as it was from 1955-69.

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